



MEMO ENDORSED

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September 20, 2023

VIA ECF

Hon. Jessica G. L. Clarke, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street, Room 1040
New York, New York 10007-1312

RE: Regency v. Atkinson et. al.; 23-cv-05479-JGLC
Request for Adjournment of Initial Pretrial Conference

Dear Judge Clarke:

We represent Defendants Barbara Atkinson, Worth Higgins & Associates, Inc., Brian Losch and Benny Bowman (collectively "Defendants") in the above-captioned action. Defendants submit this letter motion requesting an adjournment of the Initial Pretrial Conference currently scheduled for September 29, 2023, and postponing the requirement to submit a joint letter and proposed Civil Case Management Plan and Scheduling Order by September 22, 2023 in accordance with Paragraph 3(c) of the Court's Individual Rules and Practices, until Defendants' pending motion to dismiss the First Amended Complaint is decided by the Court.

Defendants timely filed their Motion to Dismiss Plaintiff's First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) on September 13, 2023, upon the grounds that the each cause of action in First Amended Complaint fails to state a claim upon which relief may be granted and that there is no personal jurisdiction with respect to Defendants Losch and Bowman (EFC No. 31). In the event that Defendants succeed on the pending motion, this action may be dismissed in its entirety, or the parties and claims could change significantly. Defendants believe that postponing the Initial Pretrial Conference will conserve judicial resources, as well as the resources of the parties. *See Elisens v. Cayuga Cty. Mental Health*, 2020 WL 8081938, at *2 (N.D.N. Aug. 26, 2020 ("In the interest of judicial economy, the Court adjourns the Rule 16 conference until a decision on the pending motion to dismiss is issued...)).

Defendants sought Plaintiff's consent to this request by contacting Plaintiff's counsel, Mr. Jerome Noll, via telephone and by the email. Mr. Noll informed us telephonically that he would not give consent to our request, stating that he does not want to delay discovery by agreeing to an adjournment.



Defendants disagree with Mr. Noll's desire to begin discovery immediately, since Defendants' motion seeks dismissal of all claims against Defendants Losch and Bowman on the basis of lack of personal jurisdiction under Fed. R. Civ. Pro. 12(b)(2). In addition, it is impossible to determine at this juncture what discovery is relevant or necessary, since the parties do not know which claims, if any, will survive after the motion to dismiss is decided.

Therefore, Defendants respectfully request that the Court adjourn the Initial Pretrial Conference and the requirement to submit a joint letter and proposed Civil Case Management Plan and Scheduling Order by September 22, 2023, until an Order has been issued in response to Defendants' motion and any subsequent responsive pleadings related thereto.

This is the first request by Defendants for an adjournment of the Initial Pretrial Conference.

We thank the Court for its attention to this matter.

Application DENIED. The filing of a motion to dismiss does not automatically stay discovery. *Hong Leong Fin. Ltd. (Singapore) v. Pinnacle Performance Ltd.*, 297 F.R.D. 69, 72 (S.D.N.Y. 2013). The joint letter and proposed Civil Case Management Plan and Scheduling Order remain due on **September 22, 2023** and the initial pretrial conference remains scheduled for **September 29, 2023**.

SO ORDERED.

JESSICA G. L. CLARKE
United States District Judge

Dated: September 21, 2023
cc: New York, New York

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Respectfully submitted,

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